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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,475	12/03/2001	Akinori Arimura	0032-0264P	3377
2292	7590	06/25/2004	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			RAO, DEEPAK R	
		ART UNIT		PAPER NUMBER
		1624		

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/980,475	ARIMURA ET AL.	
	Examiner	Art Unit	
	Deepak R Rao	1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 March 2004.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6,7,11,12,14-16,18,20 and 24 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 6,7,11,12,14-16 and 24 is/are allowed.
 6) Claim(s) 1-4,18 and 20 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1.) Certified copies of the priority documents have been received.
 2.) Certified copies of the priority documents have been received in Application No. _____.
 3.) Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ . | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

This office action is in response to the amendment filed on April 13, 2004.

Claims 1-4, 6-7, 11-12, 14-16, 18, 20 and 24 are pending in this application.

The following rejections are maintained:

1. Claims 1-4 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Henle et al., U.S. Patent No. 5,693,611, for the reasons provided in the previous office action which are incorporated here by reference.

Applicant's arguments have been fully considered but they were not deemed to be persuasive. Applicant argues that the reference teaches 'compound which are useful as antifungal and antiparazitic agents and none of the diseases/disorders of the instant claims are caused by fungal or parasitic activity'. However, as indicated in the previous office action, the reference teaches that the reference compounds are therapeutic agents useful in the treatment of systemic fungal infections or fungal skin infections. The instant claims include treatment of diseases such as dermatitis, conjunctivitis, etc., which also can be due to fungal infections. For example, any type of allergen may cause dermatitis. Allergic conjunctivitis may occur through direct contact with airborne substances including fungal spores. Therefore, many of the diseases of the instant claims may involve fungal or parasitic infections.

2. Claims 1, 3-4, 18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowe et al., WO 98/24766, for the reasons provided in the previous office action which are incorporated here by reference.

Applicant's arguments have been fully considered but they were not deemed to be persuasive. Applicant relies on the amended claim 1 wherein the term "5 or 6 membered heterocyclic group" has been replaced with specific heterocyclic groups to overcome the rejection. However, the compounds of the instant claims continue to read on reference disclosed compounds. For example, the reference disclosed compounds of Example 1, 2, etc. fall within the scope of formula (I) of the instant claims, wherein X is a single bond or -CH₂- and Y is optionally substituted alkyl.

Allowable Subject Matter

Claims 6-7, 11-12, 14-16 and 24 are allowed, for the reasons provided in the previous office action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

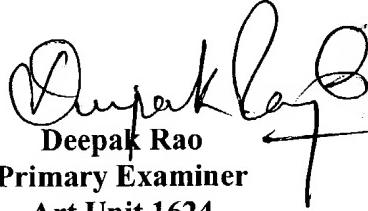
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deepak Rao whose telephone number is (571) 272-0672. The examiner can normally be reached on Tuesday-Friday from 6:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Mukund Shah, can be reached on (571) 262-0674. If you are unable to reach Dr. Shah within a 24 hour period, please contact James O. Wilson, Acting-SPE of 1624 at (571) 272-0661. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deepak Rao
Primary Examiner
Art Unit 1624

June 22, 2004